

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GLOBAL ENERGY AND MANAGEMENT, :
LLC, a limited liability com- :
pany of Connecticut, :

Plaintiff,

07 Civ. 11049 NRB

-VS-

:

XETHANOL CORPORATION, CHRISTO- :
PHER D'ARNAUD-TAYLOR, JEFFERY :
LANGBERG, LAWRENCE S. BELLONE, :
LOUIS B. BERNSTEIN, DAVID AMES, :
THOMAS J. ENDRES, ROBIN BUL- :
LER, DAVID KREITZER and JOHN :
MURPHY, :

Defendants. :

x

DECLARATION OF ROBERT A. VORT IN
OPPOSITION TO MOTION FOR SANCTIONS

STATE OF NEW JERSEY)

S.S.

COUNTY OF BERGEN)

ROBERT A. VORT declares as follows:

1. I am a member of the bar of this Court. I represent plaintiff in the above captioned action. I submit this certification in opposition to defendants' motion for Rule 11 sanctions.

2. Before defendants moved for sanctions, I tendered to their counsel a stipulation consenting to a dismissal as to defendants Enders, Kreitzer and Murphy, **Exhibit A**. Defendants refused to execute the stipulation and to forward it to the Court. In response to their motion to dismiss because of claimed

lack of specificity under Fed.R.Civ.P. 9(b), plaintiff offered to stipulate to a dismissal as to additional defendants Ames and Bernstein.

3. I forwarded to defendants' counsel by letter dated June 17, 2008 copies of the bank statements attached to the declaration of Lee Tyrol submitted in opposition to the motion for sanctions. A copy of the letter is attached to this declaration as **Exhibit B**.

4. Plaintiff has paid attention to the position advanced by defendants. The original and prior amended complaints sought recovery of lost profits. Although plaintiff believes that New York law and Connecticut law support its right to recover lost profits, even of a new business, that claim was omitted from the third amended complaint.

5. Pursuant to 28 U.S.C. §1746(2), I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 20, 2008.



Robert A. Vort

EXHIBIT A

ROBERT A. VORT, LLC

www.vortlaw.com

Robert A. Vort
Certified Civil Trial Attorney

Karin R. White Morgen

2 University Plaza, Suite 200
Hackensack, New Jersey 07601
Telephone: 201-342-9501
Facsimile: 201-342-9504

June 24, 2008

Katherine B. Harrison, Esq.
Paduano & Weintraub, LLP
Ninth Floor
1251 Avenue of the Americas
New York, New York 10020

Re: Global Energy v. Xethanol
07 Civ 11049 NRB

Dear Ms. Harrison:

I enclose a stipulation of dismissal as to defendants Enders, Kreitzer and Murphy. Please affix your signature and either return to me for filing or submit to the Court with a copy to me.

Very truly yours,

Robert A. Vort

RAV:bap
enclosure
by Federal Express
cc: Global Energy & Management, LLC
07-160

EXHIBIT B

ROBERT A. VORT, LLC

www.vortlaw.com

Robert A. Vort
Certified Civil Trial Attorney

Karin R. White Morgen

2 University Plaza, Suite 200
Hackensack, New Jersey 07601
Telephone: 201-342-9501
Facsimile: 201-342-9504

June 17, 2008

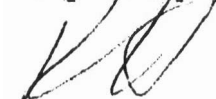
Katherine B. Harrison, Esq.
Paduano & Weintraub, LLP
Ninth Floor
1251 Avenue of the Americas
New York, New York 10020

Re: Global Energy v. Xethanol
07 Civ 11049 NRB

Dear Ms. Harrison:

I am enclosing a printout of the bank statement of New England Xethanol, LLC showing that it received a deposit of \$250,000 on June 27, 2006. I am also enclosing a statement from Webster Bank showing three deposits into the account of Global Energy and Management, LLC totaling \$250,000.33 on June 20, 2006 and June 22, 2006 and transferring \$250,000 out of the account on June 27, 2006.

Very truly yours,



Robert A. Vort

RAV:bap
enclosures
by fax, e-mail and regular mail
cc: Global Energy & Management, LLC
07-160